

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption)	DOCKET NO. 900733-WS
from Florida Public Service)	
Commission regulation for water)	ORDER NO. 24311
and wastewater systems in Lake)	
County by STEWART/BARTH UTILITY)	ISSUED: 4/2/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
GERALD L. GUNTER
J. TERRY DEASON
MICHAEL MCK. WILSON

NOTICE OF PROPOSED AGENCY ACTION

ORDER DENYING REQUEST FOR EXEMPTION

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the actions discussed herein are preliminary in nature, and as such, will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

BY THE COMMISSION:

On September 4, 1990, we received an application from Stewart/Barth Utility (applicant or utility) for an exemption from Florida Public Service Commission regulation for its water and wastewater systems in Lake County. The utility is owned by two persons, Mr. Charles Stewart and Mr. Robert Barth, as tenants in common. Along with the formal request for exemption was a letter from Mr. Stewart, wherein he detailed the history of the utility, and an affidavit by Mr. Stewart, wherein he attested to the basis for exemption. We have based our findings upon the information contained in those documents and upon the applicant's responses to questions asked of it in a letter from our staff dated November 7, 1990.

Upon request and sufficient proof, this Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater utilities if they qualify under the appropriate section of Chapter 367, Florida Statutes. The applicant sought

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recognition of its exempt status under Section 367.022(5), Florida Statutes, which provides for an exemption from Florida Public Service Commission regulation for "[l]andlords providing service to their tenants without specific compensation for the service."

The applicant will have three customers: an RV park owned by Mr. Stewart, an RV park owned by Mr. Barth, and 30 units of a condominium complex known as Baywood Condominiums. As to the RV parks, the utility would appear to be exempt under the landlord-tenant or public lodging exemptions in Section 367.022, Florida Statutes. The obstacle to granting a landlord-tenant exemption in this case is that the utility currently serves the condominiums, and these condominiums are not owned wholly or in part by the utility's owners. Thus, for that portion of the service area, the utility's owner are not landlords. If the utility's owners are not the landlords for all the customers served by the systems, the landlord-tenant exemption cannot apply. Therefore, based on the above, we hereby deny the request for exemption form the Public Service Commission jurisdiction by Stewart/Barth Utility.

In addition, we hereby require Stewart/Barth Utility to submit an application for original certificates within three months of the date of the Order.

It is, therefore

ORDERED by the Florida Public Service that the request for an exemption from Florida Public Service Commission regulation by Stewart/Barth Utility for its water and wastewater systems in Lake County is hereby denied. It is further

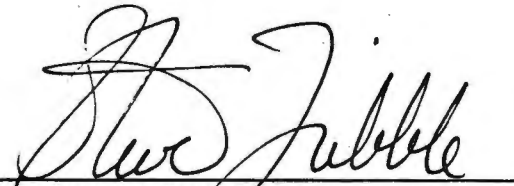
ORDERED that Stewart/Barth Utility shall submit an application for original certificates within three months of the date of this Order. It is further

ORDERED that the provisions of this Order are issued as proposed agency action and shall become final, unless an appropriate petition in the form provided by Rule 25-22, Florida Administrative Code, is received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

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ORDERED that this docket will be closed if no timely protest is received from a substantially affected person.

By ORDER of the Florida Public Service Commission, this 2nd
of APRIL, 1991.


STEVE TRIBBLE, Director,
Division of Records and Reporting

(S E A L)

MJF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial

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interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 23, 1991.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.